

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301  
Indianapolis, IN 46204  
(317) 233-0696  
<http://www.in.gov/legislative>

**FISCAL IMPACT STATEMENT**

**LS 6657**  
**BILL NUMBER:** SB 131

**NOTE PREPARED:** Dec 13, 2006  
**BILL AMENDED:**

**SUBJECT:** Criminal Gangs.

**FIRST AUTHOR:** Sen. Mrvan  
**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:**  **GENERAL**  
 **DEDICATED**  
 **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** The bill changes the definition of "criminal gang", for purposes of certain criminal statutes, to provide that a criminal gang consists of at least three members (instead of five members).

**Effective Date:** July 1, 2007.

**Explanation of State Expenditures:** *Summary:* The definition of a criminal gang under IC 35-45-9-1 is used in several sections of the code unrelated to criminal penalties. A change in the number of members defining a criminal gang has indeterminate fiscal impact in these sections. The definition of criminal gang under both IC 35-45-9-1 and IC 35-50-2-1.4 affects criminal and juvenile cases with potentially increased fiscal cost based on changes in the bill.

*Non-criminal Code Sections:* The definition of a criminal gang is used for the Anti-Gang Counseling Pilot Program and Fund in the Department of Education. It appears in the definition of psychologically affected properties and aggrieved person for purposes of civil remedies for racketeering activity. Also, limited liability of parents for damages caused by a child refers to this definition. The fiscal impact of reducing the number of members from five to three for these purposes is indeterminate, but unlikely to cause additional state expenditures.

*Criminal and Juvenile Code Sections - Criminal Gang Activity and Criminal Gang Intimidation:* There are two criminal offenses involving criminal gangs including criminal gang activity, a Class D felony, and criminal gang intimidation, a Class C felony. Under IC 31-30-1-4, the juvenile court does not have jurisdiction over these cases. There are no data available to indicate if more offenders may be convicted of these crimes, if the number of gang members is reduced from five to three. On average between 2001 and

2005, there were two offenders a year committed to a state correctional facility for criminal gang activity and no offenders committed for criminal gang intimidation.

*Racketeering Activity:* Also, violation of the sections concerning criminal gang activity or intimidation is a racketeering activity and may lead to a conviction for corrupt business influence, a Class C felony. Between 2001 and 2005, five offenders a year on average were committed to a state correctional facility for corrupt business influence.

Depending upon mitigating and aggravating circumstances, a Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, and a Class C felony is punishable by a prison term ranging from 2 to 8 years. The average expenditure to house an adult offender was \$22,734 in FY 2005. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,139. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months and for all Class C felony offenders is approximately two years.

*Fixed Term Sentence:* Based on the definition of criminal gang activity in IC 35-50-2-1.4, the state may seek to have an additional fixed term of imprisonment equal to the sentence imposed for the underlying felony or to the longest sentence for multiple felonies. This fixed term of incarceration runs consecutively to the underlying sentence and may not be suspended. If offenders are incarcerated for longer periods of time, costs to the state could increase.

*Death Penalty:* Further, if the defendant committed murder while committing criminal gang activity, the state may seek either the death penalty or life in prison without parole. State expenditures could increase if a defendant is subject to a death penalty or life in prison without parole rather than a determinate sentence. If a prosecuting attorney requests the death penalty and the court imposes a death sentence on a defendant, then state expenditures may be less than when a prosecuting attorney seeks and the court imposes life imprisonment without parole. A determinate sentence of 65 years where the offender is released after 32 years for good behavior requires less expenditures than the other two sentences.

*Background on Death Penalty:* LSA staff compared the state's after-trial costs in this analysis for a hypothetical 30-year-old offender. (The average age of 84 offenders who were sentenced to death was 30 at the time when a request for a death penalty was made against them.) The post-trial expenditures are incurred by the Office of the Attorney General, the DOC, the State Public Defender, the State Police, and the Public Defender Commission, which reimburses counties for a percentage of the costs of representing a defendant in a direct appeals case.

Because these costs occur at different points in time, a net present value was calculated for each cost stream assuming an annual inflation rate of 5%. The following table presents the total costs for each sentence option.

<b>Estimated State Expenditures of Sentencing Outcomes for a 30-Year-Old Offender Convicted of Aggravated Murder in a Death Penalty Trial</b>	
<i>Sentence Option</i>	<i>Net Present Value</i>
Death Penalty	\$513,953
Life Without Parole	\$610,878
65 Years with 50% Credit Time	\$485,390

**Explanation of State Revenues:** *Non-criminal Code Sections:* If a person suffers a pecuniary loss as the result of criminal gang activity or intimidation, the person may bring a civil action against the offender. If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

*Criminal and Juvenile Code Sections:* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony and a Class C felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), the judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

**Explanation of Local Expenditures:** *Criminal and Juvenile Code Sections:* If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

**Explanation of Local Revenues:** *Non-criminal Code Sections:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

*Criminal and Juvenile Code Sections:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the

judge and depending upon the particular type of criminal case.

**State Agencies Affected:** Department of Education; Department of Correction.

**Local Agencies Affected:** Trial courts, city and town courts, local law enforcement agencies.

**Information Sources:** Indiana Sheriffs' Association, Department of Correction.

**Fiscal Analyst:** Karen Firestone, 317-234-2106.